IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 2729 of 1984
with
SPECIAL CIVIL APPLICATION No. 2730 of 1984

For Approval and Signature:

Hon'ble MISS JUSTICE R.M. DOSHIT

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

CHAVDA SHANKARJI BHARTHAJI

Versus

CHAVDA RAJUJI BADARJI SINCE DECEASED THROUGH HIS HEIRS&L.R

Appearance:

Special Civil Application No. 2729 of 1984
MR JITENDRA M PATEL for Petitioner No. 1
Respondents No. 1/1-1/3,1/5-1/6,2/A - Served
Respondents No. 1/4 - not served
ABATED against Respondent No. 2/B

Special Civil Application No. 2730 of 1984
MR. JITENDRA M PATEL for Petitioner No. 1
MR R.A PATEL for Respondent Nos. 1/1 to 1/6 &
2/1 to 2/3
Respondent No. 2- Served
ABATED against Respondent no. 2-B

CORAM : MISS JUSTICE R.M.DOSHIT

Date of decision: 09/01/2002

COMMON JUDGEMENT

Heard the learned advocates.

Leave to delete the respondent no. 1/4 in Special Civil Application No. 2729 of 1984.

These two writ petitions are preferred under Article 227 of the Constitution against the common judgment and order dated 20th July, 1983 passed by the learned Gujarat Revenue Tribunal [hereinafter referred to as, `the Tribunal'] in Revision Applications Nos. TEN.B.A.156/80 and TEN.B.A.841/80.

The dispute pertains to the land bearing Survey no. 39 admeasuring 1 Acre 38 Gunthas, situated at village Varsoda, Taluka-Vijapur, District-Mehsana. It is the claim of the petitioner that his father, the predecessor in possession was inducted in the said land as a tenant. It is the claim of the petitioner that the said land belonged to one Nathusinh Fatehsinh Chavda. The said land was in the year 1954 given to a Charitable Trust [Kutra-Kabutra]. The mutation entry No. 63 in that respect was made in the year 1954 and was certified on 23rd April, 1954. The Managing Trustee of the said Trust one Hiralal Nagindas Shah inducted father of the petitioner-Shri Bharthaji Bhojaji as a tenant in the said land. The mutation entry no. 579 in that respect was made in the year 1954 and was certified on 23rd April, 1954. Thus, the said Bharthaji Bhojaji cultivated the said land as a tenant since the year 1954. The said Bharthaji Bhojaji thus became a protected tenant and continued to cultivate the said land even after the tiller's day ie., 1st April, 1957. After the death of said Bharthaji Bhojaji, the petitioner, being his son, continued to cultivate the said land. The petitioner has been cultivating the said land till this date. The petitioner thus claims to be in possession of the said land continuously since the year 1954 and the deemed purchaser thereof. However, the predecessor of the respondents one-Badarji Bhavanji also appears to have been inducted in the said land as a tenant. The mutation entry no. 268 to that effect has been made in the revenue records and has been certified on 5th June, 1956. Proceeding under section 32 (G) of the Bombay Tenancy & Agricultural Lands Act, 1948 [hereinafter referred to as, `the Act'] was initiated in respect of the said land in

the year 1961. On 4th November, 1962, mutation entry no. 1475 was made in the revenue records to the effect that Chavda Badarji Bhavanji, the protected tenant of Survey No. 39/1 had remained present before the authority. He was not willing to purchase the said land. The matter was, therefore, referred to the District Collector, Mehsana for further proceeding under Section 32-P of the Act. Since then, mutation entry no. 1699 has been made on 13th November, 1963 evidencing that the inquiry for the purpose of disposal under section 32-P was entrusted to the Additional Mamlatdar. However, no other entry has been made in the revenue record indicating that any order of disposal under section 32-P was made in respect of the said land. On the death of the said Badarji Bhavanji, names of his heirs and legal representatives were entered in the revenue records on 6th January, 1970 under mutation entry no. 2317.

It appears that with a view to giving further opportunity to the tenant to purchase land under Section 32-PP of the Act, the Mamlatdar & ALT, Vijapur in the month of November, 1974 issued notice to the said Bharthaji Bhojaji and Badarji Bhavanji - the predecessors of the petitioner and the respondent no. 1. In the said proceeding, the said Bharthaji Bhojaji remained present and expressed his willingness to purchase the land and to pay the price that may be determined. He also stated that the said Badarji had passed away and his heirs were serving in the police department. The deceased Badarji Bhavanji was not in possession of the said land and was not residing in the village. The Managing Trustee of the Trust [Kutra-Kabutra] also made a statement that the land was cultivated by Shanker Bharthaji. The heirs of Badarji Bhavanji had given up the possession since they were serving elsewhere. The land was given to the father of Shankerji [the petitioner] for cultivation; there should be no objection if the land were sold to the said Shankarji [the petitioner]. It appears that no body appeared on behalf of the said Badarji Bhavanji. Pursuant to the said statements, the Mamlatdar & ALT, Vijapur under his order dated 25th January, 1978 was pleased to hold that Badarji Bhavanji was the tenant; the matter was referred to the Collector for disposal under Section 32-P; therefore, Bharthaji Bhojaji even though he was cultivating the land as a tenant, had no right to purchase the same, his possession was illegal. Badarji Bhavanji was entitled to purchase the same till 31st December, 1978. The said decision, therefore, shall be kept in abeyance. Since then, the respondent no. 1 Rajuji Badarji, being the son of the deceased Badarji Bhavanji applied for purchase of the said land under

section 32-PP of the Act. The said application being tenancy case no. 258/78 was decided by the Mamlatdar & ALT, Vijapur on 25th October, 1978. The respondent no. 1 appeared before the Mamlatdar & ALT, Vijapur and made a statement that his father had passed away; his sons were residing at Kalol; if the land were sold to him, he would cultivate the same after his retirement; he had another land admeasuring two vighas which was being cultivated by his mother; his father had cultivated the said land as a tenant prior to 1961; his younger brother Amarsinh was serving at Bhopal. He was agreeable to pay the purchase price that may be determined. The petitioner also appeared before the Mamlatdar & ALT and gave his evidence. The Mamlatdar & ALT, Vijapur did not believe the evidence of the petitioner. He was pleased to hold that the petitioner could not have cultivated the land for twenty five years, as stated by him. He, therefore, held that the land was purchased by the heirs of Badarji Bhavanji on 1st April, 1957. He declared that the possession of the petitioner was illegal and directed the petitioner to hand over the possession. The price of the land was determined at Rs. 880/= which was directed to be paid by the respondent no. 1 within one year. Feeling aggrieved, the petitioner preferred Tenancy Appeals Nos. 444 of 1979 and 465 of 1979 before the Deputy Collector, Mehsana which was dismissed on 28th November, 1979. Feeling aggrieved, the petitioner preferred above referred Revision Applications nos. 156 of 1980 and 841 of 1980 before the learned Revenue Tribunal which were dismissed on 20th July, 1983. Feeling aggrieved, the petitioner has preferred the present petitions.

I am of the view that both the authorities below and the Tribunal have committed a grave error in overlooking the mutation entry no. 579, certified on 23rd April, 1954. The said entry in unequivocal terms records that the father of the petitioner, Bharthaji Bhojaji, was inducted as a protected tenant in the said land. The authorities below have also erred in holding that since the matter was referred to the Collector for disposal under Section 32-P of the Act, the petitioner could not have claimed a right of tenancy or right to purchase the said land under Section 32-PP of the Act. Similarly, both the authorities below and the Tribunal have erred in holding that the father of the petitioner [i.e., Bharthaji Bhojaji] had absolutely no right to claim the benefit under Section 32-PP of the Act as he was not the tenant of the said land on 1st April, 1957 and that the order under Section 32-P of the Act was made against Badarji Bhavanji who had refused to purchase the

land under Section 32-G of the Act. The learned Tribunal has also erred in holding that the said Bharthaji Bhojaji had come on the land subsequently and had no right to apply under section 32-PP of the Act. The findings recorded by both the authorities below and the Tribunal are not supported by the facts on record. There is nothing on the record to indicate that the said Bharthaji Bhojaji had come on the said land subsequently. Further, any order made in respect of the said Badarji Bhavanji under Section 32-G of the Act would not be binding to the said Bharthaji Bhojaji since it is indisputable that the said Bharthaji Bhojaji was not a party to the said proceeding.

In above view of the matter, the petitions are allowed. The impugned judgment and order dated 20th July, 1983 passed by the Tribunal in Revision Applications Nos. TEN.B.A 156 of 1980 and TEN.B.A 841 of 1980; the order dated 28th November, 1979 of the Deputy Collector, Mehsana made on Tenancy Appeals Nos. 444 of 1979 and 465 of 1979; the order dated 25th October, 1978 of the Mamlatdar & ALT, Vijapur in Tenancy Case No. 258 and the order dated 25th January, 1978 made by the Additional Mamlatdar & ALT, Vijapur are quashed and set-aside. The claims made by the deceased Bharthaji Bhojaji and the respondent no. 1 for purchase of the said land under Section 32-PP of the Act are remanded to the Mamlatdar & ALT, Vijapur for hearing and decision afresh. The Mamlatdar & ALT, Vijapur shall give full opportunity to the petitioner and the respondent no. 1 to putforth their case and to lead further evidence, if any. The Mamlatdar & ALT, Vijapur shall give due precedence to the said applications. Rule nisi issued in each of these petitions is made absolute to the above extent. The parties shall bear their own costs.

[Ms. R.M Doshit, J.]

Prakash*